

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5544 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NASHIRKHAN GULABKHAN PATHAN

Versus

DISTRICT MAGISTRATE

Appearance:

MR ANIL S DAVE for Petitioner

MR KC SHAH, A.G.P. for Respondents

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 14/08/96

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner has brought under challenge the detention order passed against him on 21st March 1996 rendered by the first respondent under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No.16 of 1985), hereinafter referred to as "the PASA Act."

2. The grounds on which the impugned order of detention has been passed appear at Annexure : C to the petition. They inter alia indicate that the petitioner detenu has been carrying on criminal and anti-social activities of committing theft of movables and of causing hurt to innocent people with the aid of his associates and creating atmosphere of fear. Following offences have been registered in Jambusar Police Station against the petitioner :

1. CR No.I 30/93 U/s.457 & 380 Released on bail
dtd.21.3.1993 I.P.C. The of Rs.2000/-
matter is
pending in the
Court.

2. CR No.I 130/94 U/s.380 r/w. - do -
dtd.27.9.1994 Sec.114 I.P.C.
Matter is
pending in the
Court.

3. CR No.II 121/95 U/s.323, 504 - DO -
dtd.14.11.1995 I.P.C. r/w.
Sec.135 of the
Bombay Police
Act. The matter
is pending in
the Court.

In the first two matters the facts indicate that the petitioner had indulged in committing theft at the respective places of the witnesses. The third case indicate the fact with regard to the petitioner having assaulted and caused injuries to the complainant. It has been recited that the detenu's anti-social activity tends to obstruct the maintenance of public order and in support of the said conclusion the statements of four witnesses have been relied upon. They indicate the incidents occurring at different points of time, but neither specified nor registered. The incidents relate to beating of the witnesses and causing fear to the people collected at such incidents as also generating communal disharmony.

3. It has been recited in the grounds of detention that there was Chapter Case No.1/94 filed against the petitioner in the Court of S.D.M., Bharuch and as per the order dated 1.10.1994 the petitioner was externed for a

period of two years from the date of receipt of the order from the District of Surat, Bharuch and Vadodara. Besides that there was a Chapter Case No.16/94 in the Court of Executive Magistrate at Jambusar and by order dated 22.9.1994 Bond in the sum of Rs.1000/- was taken from the petitioner for seeing that no breach of peace was committed by him. Even then the petitioner has committed breach of the order of externment and for such breach CR No. II - 123/95 dated 15.11.1995 and CR No.132/95 dated 6.12.1995 were registered. Thus there is no effect of the Court's order on the petitioner

4. It is on the aforesaid two incidents that the detaining Authority has passed the impugned order of detention while also relying upon the aforesaid cases lodged against the petitioner.

5. I have heard the learned Advocate for the petitioner and learned A.G.P. for the State. The petitioner has challenged the aforesaid order of detention on number of grounds, inter alia, on the ground of delay as can be seen from Para : 7 of the petition, which reads as under :

"The petitioner states and submits that there is an inordinate delay in passing the order of detention as the last offence being CR No.121/1995 registered at Jambusar Police Station, Dist. Bharuch has taken place on dated 14.11.1995 and the detenu is enlarged on bail on 11.12.1995 and the statements of witnesses, claiming privilege u/s.9(2) of the Act has been recorded on 18.2.1996, 19.2.1996 and 20.2.1996. All these statements are recorded after the detenu became successful in getting bail in connection with C.R. No.121/1995 registered at Jambusar Police Station, Dist. Bharuch. There is, therefore, an inordinate and unreasonable delay which has resulted the subjective satisfaction of the detaining authority vitiating as the live link between the prejudicial activities of the petitioner-detenu and passing the impugned order of detention is being snapped. The impugned order of detention of the petitioner-detenu therefore requires to be quashed and set aside by this Hon'ble Court."

6. Although there is no affidavit in reply to the aforesaid ground of delay it has been submitted by Mr.K.C.Shah, learned A.G.P. that the delay would stand explained by the ground of detention with regard to

breach of order of externment referred to by the Detaining Authority. It is true that the Detaining Authority has referred to the breach of order of externment, but even that breach is also stated to have been committed some-where in the month of November, 1995 or early part of December, 1995. The order of detention has been passed in March, 1996 and the statements, general in nature, have been recorded on or around 18/19/20th February 1996. The cases of theft are quite old whereas the case of causing hurt is of November, 1995. Almost more than 4 months thereafter the impugned order of detention has been passed by the Detaining Authority. This is inspite of the fact that the petitioner is alleged to have committed breach of the order of externment some-where in the month of November, 1995. It can, therefore, hardly be said that the delay has been explained by the Detaining Authority. It is in the context of such facts that reliance has been placed on the decision of the Honourable Supreme Court in the case of P.N.Paturkar V/s. S. Rama Murti, reported in A.I.R. 1994 SC 656. There the reference was made to an earlier decision of the Apex Court in the case of T.A.Abul Rahman v. State of Kerala, (1989) 4 SCC 741 : (AIR 1990 SC 225). Following observations have been quoted :

"The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the Court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the causal connection has been broken in the circumstances of each case."

In the case before the Supreme Court there was a

delay of 5 months and 8 days from the date of registration of the last case and of more than 4 months from the submission of the proposal. The statements were obtained only after detenu became successful in getting bail in all the cases registered against him. So far as the case in hand is concerned, first two cases are quite old. They are of 1994. The third case is of November, 1995, even thereafter there is a delay of around 4 months. What is important is that inspite of breach of externment order prior to about 4 months the order of detention has been passed without explaining passage of time. It is under such circumstances that decision in P.N.Paturkar (Supra) would not be applicable to the facts of the present case.

7. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed directly on the strength of decision of P.N.Paturkar (supra), it is not necessary to deal with the other grounds. Hence, following order is passed :

The impugned order of detention is hereby quashed and set aside. The petitioner - detenu Nashirkhan Gulabkhan Pathan shall be forthwith set at liberty if he is not required to be detained in any other case. Rule made absolute accordingly.

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